IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 11TH JULY 2007 / 20TH ASHADHA 1929

CRP.No. 1156 OF 2004(H)

OP.11/1998 OF SUB COURT, CHERTHALA

REVN. PETITIONER/RESPONDENTS 1 & 3 TO 8 IN THE O.-P.

1. SREE NARAYANA MEDICAL MISSION,
   CHERTHALA.

2. KRISHNAN RAMADAS, MANIBEN FROM
   RAMAVILASATHU, CHERTHALA VADAKKU VILLAGE,
   VADAKKU MURI.

3. PAVITHRAN, LAKSHMI SADANATHIL,
   THANNEERMUKKOM VADAKKU VILLAGE,
   VADAKKUM MURI.

4. SASANKAN, CHARANGATTU VEETTIL,
   PERUNNARMANGALAM MURI, MARARIKULAM NORTH
   VILLAGE.

5. RAJAN, MAYITHARAYIL,
   CHARAMANGALAM MURI, THANNEERMUKKOM VILLAGE
   (WRONGLY TYPED AS `RAJAN' INSTEAD OF
   `SAJAN').

6. V.R.PRASAD, RESIDING AT ASHA BHAVANIL,
   (JOVIN BUNGLOW), CMC 24, CHERTHALA
   VADAKKU VILLAGE, VADAKKUM MURI.

7. KESAVADAS, RESIDING AT RAMA VILASAM
   FROM MANIBEN, CMC 4, CHERTHALA VADAKKU
   VILLAGE, VADAKKUM MURI.

BY ADV. SRI.A.N.RAJAN BABU

C.R.P. 1156/2004

RESPONDENTS:

1. RADHAKRISHNAN, RESIDING AT
DWARAKAYIL,CMC 4, CHERTHALA VADAKKU VILLAGE,
DO. MURI.

2. PRAKASAN, RESIDING AT PARVATHISADANATHIL
FROM CHARAMKATTU CHERTHALA THEKKU VILLAGE,
-DO- MURI.

BY ADVS. M/S. T.C.MOHANDAS &
T.M.SUNIL

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 11/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP 1156/2004

ORDER ON I.A. NO. 2829/2004 IN C.R.P. 1156/2004

//DISMISSED //

11.7.2007. **SD/-**

P.R. RAMAN, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

KNC/-

P.R. RAMAN, J.

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C.R.P. NO. 1156 OF 2004

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DATED THIS, THE 11TH DAY OF JULY, 2007.

O R D E R

Revision petitioners are the respondents in I.A. 7/1998 in O.P. 11/1998 on the file of the Sub Court, Cherthala. It was an application filed under Section 92(2) of the Code of Civil Procedure seeking leave to file the suit. As per Section 92 C.P.C., in case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General or two or more persons having an interest in the trust and having obtained the leave of the court may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject matter of the trust is situate to obtain a decree - as specified in clause (a) to (h) thereunder.

2. Since this is only an application seeking leave to institute the suit, what is necessary at this stage is only to make out a prima facie case that

it is a public trust since even after granting the permission sought for, the respondents are entitled to contest the matter including the question as to whether it is a charitable trust or not and therefore permission granted under Section 92 CPC only removes the ban subject to the right of the respondents to contest the matter after adducing evidence. The court below by the impugned order dated 20th July, 2004, granted the leave as sought for against which this revision petition is filed.

3. Therefore, the only question is whether the order passed by the court below expressing the prima facie view while granting permission as sought for to institute the suit can be said to be wrong or illegal and whether the court has failed to exercise the jurisdiction vested on it or acted illegally or with material irregularity?

4. It was specifically averred in the petition that the deed was executed primarily for rendering medical aid to poor population of the locality. The object of the settlement is to serve people and the governing committee member can not lay claim over the profits. They do not have the right to alienate or otherwise encumber the properties of the institution which is named Sree Narayana Medical Mission, as per Ext.P1. The court below after referring to the decision of the apex court in **Income Tax**

Commissioner, Kanpur v. Kamla Town Trust (AIR 1996 S.C. 626) where in it is held that any provision made for a poor class of public, well earmarked as recipients of such benefits would certainly make the object of such bounty a charitable one, held that the trust deed Ext.A1 authorizes the trustees to admit any Hindu as a member of the trust on payment of Rs.5,000, though it is subject to the decision of the majority of the governing body. Relying on the decision of the apex court in Mulla Gulam Ali & Safiabai D Trust v. Dileep Kumar (AIR 2001 SC 2403), it was held that even though the trust may be vested in a group of persons, that by itself cannot lead to an inference that the trust is not a public trust and therefore, the court did not go into the other disputes relating to the administration of the trust and competency of the then trustees. But it formed a prima facie opinion that the trust in the case is a public trust. The court below has also given reasons in support thereof. Now even if two views are possible, that by itself will not make the order illegal or an order which could be said to have been passed without jurisdiction or based on any material irregularity. In the circumstances, I do not find that the order impugned in this revision is liable to be interfered with at this stage.

5. Subject to the right of the petitioners to contest the issue by filing a

written statement and to contest the issue on merits along with other issues, this revision is dismissed.

It is made clear that the court below shall decide the issues untrammeled by the finding in the impugned order.

P.R. RAMAN,
(JUDGE)

knc/-